

The opinion in support of the decision being entered today
was **not** written for publication and
is **not** binding precedent of the Board.

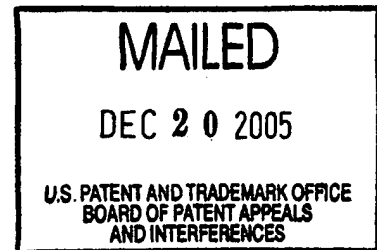
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MATTHEW W. MENDERINK, JOSHUA A. PESIKOFF,
CENA A. POHL and DAVID J. WILSON

Appeal No. 2005-2700
Application No. 09/734,043

ON BRIEF



Before HAIRSTON, BARRY, and NAPPI, **Administrative Patent Judges.**

NAPPI, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 of the final rejection of
claims 1 through 16. For the reasons stated *infra* we affirm the examiner's
rejections of claims 1 through 16.

THE INVENTION

The invention relates to a system for allowing a user to create a customized web page. To create a customized web site a user accessed a web page forming component on a web site, and selects web site features to incorporate into the user's customized web page. See page 5 of appellants' specification.

Claim 1 is representative of the invention and is reproduced below:

1. A system for allowing a user to customize a personal web page using an Internet web site having predetermined features that can be incorporated into the personal web page, the system comprising:
 - a server that is connected to the Internet and that controls the web site; and
 - a web page-forming component for forming the personal web page incorporating one or more of the features of the web site in response to an input provided by the user via the Internet, said personal web page comprising a private component accessible only by the user and a public component accessible to anyone, wherein the user's input determines which of the features appear in the private component and which of the features appear in the public component.

THE REFERENCES

The references relied upon by the examiner are:

Newman et al. (Newman)	5,983,245	November 9, 1999
Hickman	US2001/0033564A1	October 25, 2001 (filed April 28, 1997)
Fleskes	6,529,910	March 4, 2003 (filed Sept. 16, 1999)
MacPhail	6,597,377	July 22, 2003 (filed Feb . 25, 1997)
Te et al. (Te)	6,785,864	August 31, 2004 (filed Dec. 1, 1999)

THE REJECTIONS AT ISSUE

Claims 1, 3, 4, 6 through 8 and 10 through 12 stand rejected under 35 U.S.C. § 102(e) as anticipated by Fleskes. Claims 2, 5 and 9 stand rejected under 35 U.S.C. § 103 (a) as being obvious over Fleskes in view of Hickman. Claims 13 through 16 stand rejected under 35 U.S.C. § 103 (a) as being obvious over Fleskes.

Throughout the opinion we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellants' arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

With full consideration being given to the subject matter on appeal, the examiner's rejections and the arguments of appellants and the examiner, for the reasons stated *infra* we sustain the examiner's rejections of claims 1, 3, 4, 6 through 8 and 10 through 12 under 35 U.S.C. § 102 (e) and the examiner's rejection of claims 2, 5, 9 and 13 through 16 under 35 U.S.C. § 103 (a).

We first consider the examiner's rejection of claims 1, 3, 4, 6 through 8 and 10 through 12 under 35 U.S.C. § 102 (e) which is set forth on pages 4 through 6 of the answer.

Arguments directed to claims 1, 6, 7, 8 and 12.

Appellants state on page 6 of the brief that independent claims 1 and 8 contain limitations of "a web page-forming component for forming the personal web page incorporating one or more of the features of the web site in response to an input provided by the user via the Internet." Appellants argue, on page 7 of the brief, "[t]here is no teaching or suggestion that the models and predetermined templates of Fleskes are predetermined features of an Internet web site that can be incorporated into a personal web page." Further, on page 2 of the reply brief, appellants argue:

[T]he models and predetermined templates/designs taught by Fleskes cannot be incorporated into a personal web page. Rather, a user of Fleskes selects the template, and enters data about a new organization into the template. A new web page is designated to have a "similar look and feel" as an existing organization web page[]. In other words, the models and templates/designs are not "features" (i.e. content) incorporated into a web page as in the claimed invention; they are simply used to format a web page.

The examiner in response, on page 11 of the answer, states:

The examiner submits that the term "feature" could be interpreted broadly by one of ordinary skill in the art at the time of the present invention. Appellants failure to significantly narrow the scope/definition of the claim language implies that the appellants intend broad interpretation be given to the claims. Accordingly, the examiner has interpreted the models and predetermined templates/designs taught by Fleskes as "features" in the claimed invention. In this regard, it is clear that Fleskes discloses,

teaches and suggests, “a web page-forming component for forming the personal web page incorporating one or more of the features of the web site in response to an input provided by the user via the Internet”, (col. 3, lines 8-17).

In regards to appellants['] arguments that Fleskes contains no hint of even a remote suggestion of the claimed “web page-forming component”, the examiner respectfully disagrees. One of ordinary skill in the art at the time of the present invention would interpret a “web page-forming component” as any component that creates web pages. Accordingly, the examiner has interpreted the application (26) taught by Fleskes, to be the “web page-forming component”, since the application is a component of system (10), (Fig. 1), and the application creates web pages, (col. 6, lines 47-51)

We concur with the examiner’s rationale. Claims will be given their broadest reasonable interpretation consistent with the specification, and limitations appearing in the specification will not be read into the claims. *In re Etter* 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985). In analyzing the scope of the claim, office personnel must rely on the appellant’s disclosure to properly determine the meaning of the terms used in the claims. *Markman v. Westview Instruments, Inc.*, 52 F3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir. 1995). “[I]nterpreting what is *meant* by a word in a claim ‘is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.’” (emphasis original) *In re Cruciferous Sprout Litigation*, 301 F.3d 1343, 1348, 64 USPQ2d 1202, 1205, (Fed. Cir. 2002) (citing *Intervet America Inc v. Kee-Vet Laboratories Inc.* 12 USPQ2d 1474, 1476 (Fed. Cir. 1989)). Appellants’ specification does not define the term “features”, however, features are discussed throughout the specification. Page 3 of appellants’ specification states: “[t]he user’s input determines which web site features

appear in the personal page.” Further, page 7 of appellants’ specification provides the following examples of features: “a calendar, access to e-mail through the web site, or access to an Internet search engine.” Thus, we consider the scope of the term “features” to be an image that may be viewed on a web site, and we consider the scope to include active images such as links, which provide access to other functions.

We find that Fleskes teaches a system that allows a user to input data and automatically create a series of web pages to present the data. These web pages can be public or private. See column 1, lines 58-65. We consider the private web pages to meet the claimed personal web pages. The web pages are stored on a server and may be retrieved via the World Wide Web, i.e. the server maintains a web site. Fleskes teaches that an application program 26 is used to generate web pages from the data. See column 6, lines 47-55, column 8, lines 57-60. Fleskes teaches that predetermined templates/designs are combined with the data to create the web pages. See column 3, lines 11-16. Fleskes teaches that program 26 is a “web page generator.” See column 9, lines 37 through 42. Program 26 provides a master page, item 60 shown in figure 5A in which a user inputs data to create private and public web pages. See column 9, lines 60-67 and column 10, lines 38-45.¹ Thus, we concur with the examiner’s

¹ We note that the examiner in the response to arguments section refers to the master page 60, shown in figures 5A&B to describe the operation of program 26. While we concur with the examiner’s findings that figures 5A&B depict the operation of program 26. We consider the depiction of the web site configuration page in figures 91A through F to be more comprehensive.

finding that Fleskes' templates/designs meet the claimed features. Further, we note that Fleskes teaches in the column 12 table (column 12, lines 5-30) a list of information that can be managed and displayed by web page generator application, and the list includes a calendar and e-mail groups, items appellants' specification identifies as "features." Thus, we find that Fleskes teaches the claimed features and that web page generator 26 is used to create web pages including features.

Further, on page 3 of the reply brief, appellants argue that the examiner's assertion that the application program 26 meets the claimed "web page forming component" is improper. Appellants reason:

Fleskes' generation of images that can be displayed as a web pages is not analogous to forming a personal web page by incorporating predetermined features of a web site in response to an input provided by a user in the claimed invention. Thus, Fleskes does not disclose, teach or suggest the "web page-forming component" of claims 1 and 8.

We are not convinced by appellants' arguments, as appellants have identified no differences between Fleskes' "images that can be displayed as web pages" and the claimed personal web page. Further, we note that Fleskes identifies, in column 9, lines 37 and 38, the program 26 as a web page generator. Fleskes teaches that web pages may be public or private. We consider private web pages to meet the claimed personal web pages. See column 10, lines 39 through 42. Thus, we are not persuaded by appellants' arguments directed to independent claims 1 and 8, and sustain the examiner's rejection of claims 1 and 8 under 35 U.S.C. § 102(e).

Claims 6 and 7 are dependent upon claim 1, claim 12 is dependent upon claim 8, all of which are similarly rejected under 35 U.S.C. § 102(e). Appellants have presented no arguments directed to either claims 6, 7 or 12. Thus, we sustain the examiner's rejection of claims 6, 7 and 12 for the reasons stated with respect to claim 1.

Arguments directed to claims 3 and 10.

Appellants argue on page 8 of the brief that claims 3 and 10 are allowable for the reasons argued with respect to claims 1 and 8. Additionally, appellants argue that claim 3 has the limitation of "a single action construction component, wherein the user may add one or more of the web site features to the personal web page with a single action."

The examiner states, on page 13 of the answer that since Fleskes teaches that the master page is editable, and buttons are available to perform the editing, then the single action construction components are available. Further, the examiner states "there is no indication in the claims that indicates a users state. Thus, there is no indication in the claims that clearly indicate whether or not there are steps performed before a user adds one or more web site features to the personal web page with a single action. Therefore, in the teachings of Fleskes, the steps that a user takes before a user adds one or more of the web site features to the personal web page with a single action is insignificant with regards to the claimed invention."

In the reply brief, on page 3, appellants argue that the buttons discussed by the examiner are “editing buttons” and do not add features of a web site to a personal web site. Further, on page 4 of the reply brief, appellants assert: “[i]t is immaterial that the user may perform steps, unrelated to adding one or more web site features to the personal web page, before adding the features in a single action –i.e., by using the single action construction component.”

Claim 3 includes the limitation “a single action construction component, wherein the user may add one or more of the web site features to the personal web page.” We concur with the appellants that it is immaterial what steps are performed before adding features. We consider the scope of the claim such that once at the point of adding features, one step is performed to add one or more features to the personal web site. We consider this to be a broad limitation and include the scenario whereby many features are selected, but not added to the personal web site until a single “execute” or submit command is entered. We find that Fleskes teaches just such a command. In the master pages shown in figure 5b, there is a button 82, and in figure 91F (the button is identified but not numbered), titled “submit” which submits the selected changes to be added to the web page. That is, we find that Fleskes teaches the additions are not made to the web site until the “submit” button is selected. While not shown in figures 5A&B, figures 91A-F show that the user of program can select features and identify on which web page they are to be displayed. Accordingly, we are not

convinced by appellants' argument that the limitations of claims 3 and 10 are not taught by Fleskes and we sustain the examiner's rejection of claims 3 and 10.

Arguments directed to claims 4 and 11.

On page 9 of the brief, appellants assert that claims 4 and 11 recite limitations directed to "an annotation component that allows the user to create and store a comment related to one of the features in the personal web page." Appellants argue there is no disclosure in Fleskes that optional components are related to one of the features of the personal web page. Further, on pages 4 and 5 of the reply brief, appellants argue:

There is absolutely no support, teaching or suggestion in the Fleskes reference that the optional components, e.g., list of comments, is related to one of the templates (which the Examiner incorrectly associates with "features" of the present invention) used to create a web page. Furthermore, Fleskes does not expressly or inherently disclose how the list of comments is created or stored. In other words, a user in the system of Fleskes does not create and store an accessible comment related to one of the features in the personal web page using an annotation component.

The examiner states on page 14 of the answer:

[T]he examiner has interpreted the models and predetermined templates/designs (in this case "items" col. 9, lines 43-47) taught by Fleskes as "features" in the claimed invention. Therefore, the teachings of Fleskes clearly show the optional components being related to one of the predetermined features in the personal web page, (col. 10, lines 20-23), and therefore, Fleskes clearly discloses, teaches and suggests, "an annotation component that allows the user to create and store a comment related to one of the features in the personal web page, such that the comment may be later accessed," (col. 10, lines 20-23).

We concur with the examiner. As stated *supra* with respect to claim 1, we consider Fleskes to teach the forming of a web site incorporating one or more

“features.” We find that Fleskes, in discussing information that can be included in the web page using program 26, states, in column 10, lines 22 through 23, that “optional components such as custom page or image, or a list of comments, and the like” can be included. Thus, we find that Fleskes teaches that among the features that can be incorporated into a web page is a comment that may be later accessed. Accordingly, we sustain the examiner’s rejection of claims 4 and 11.

Arguments directed to claims 2 and 9

Appellants argue, on page 10 of the brief, that the rejection of claims 2 and 9 over Fleskes in view of Hickman is improper. Appellants argue “[l]ike Fleskes, Hickman fails to teach or suggest Appellants’ ‘web page-forming component for forming the personal web page incorporating one or more of the features of the web site in response to an input provided by the user via the Internet.’” Further, appellants argue, on pages 11 through 13 of the brief that there is no motivation to combine the references.

The examiner responds on page 16 of the answer, stating that the rejection relies upon Fleskes, not Hickman, as teaching a web page-forming component. Further, in regard to the appellants’ assertion that there is no motivation to combine the references, the examiner states:

[I]t was well known in the art at the time of the present invention to provide bibliographical information on a user in a web page that may be viewed by the public. Hickman demonstrates this, and shows bibliographic information on a user in a web page that could be viewed by the public for the purpose of explaining to the public the biography of an individual associated with a business, (page 6, paragraph 68). Allowing a third party

to access a public component from a web site in a single action was also well known in the art at the time the invention was made. Hickman also demonstrates this, and shows a third party accessing a public component from a web site in a single action by means of a hyperlink. Doing this allows a user instant access to a requested web page, (page 6, paragraph 68).

On page 6 of the reply brief, appellants argue that the examiner has not provided reasoning as to why one would be motivated to combine Fleskes and Hickman. Further, appellants argues:

Notwithstanding, Hickman discloses a biography of an individual for individual users. However, there is no disclosure that the biography is included in a "public component." Fleskes also fails to disclose, teach or suggest a "public component," and the predetermined templates of Fleskes do not include an entry for a biography. Indeed, it would not have been obvious to combine the systems of Fleskes and Hickman but for the teachings of the present invention.

We are not persuaded by appellants' argument. Claim 2 includes the limitation "wherein the input further provides biographical information on the user to be included in the public component." We concur with the examiner's findings that Hickman teaches that web pages may have a biography of an individual. As stated *supra*, we find that Fleskes teaches that public and private web pages can be created. Further, we consider Fleskes depiction of the master page used to create web pages shown in figures 91 A through F, provides a suggestion to make use of biographies in the web pages. Fleskes teaches, under the "links" feature shown in figure 91D, there are features titled "Individuals", "Affiliates" and "Staffers", and these features can be selected to be displayed on several pages "home", "member" and "staff". We consider "home" to be a public web page.

Further, we consider the inclusion of a description field to suggest presenting additional information about the individuals, affiliates or staffers. As stated by the examiner, Hickman teaches that one way to provide information about a person is to provide a biography. Accordingly, we find a suggestion to combine Hickman's teaching of a web page with a biography with Fleskes web page generator. Accordingly, we sustain the examiner's rejection of claim 2 under 35 U.S.C. § 103.

In the brief and reply brief, appellants' argue claims 2 and 9 together as a group. Accordingly, we sustain claim 9 for the same reasons as claim 2. In the brief, appellants argument groups claim 5 with claims 2 and 9, but in the reply brief, appellants change the grouping and separately argue claim 5. 37 C.F.R. 41.37 states with regard to the appeal brief:

For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.

As appellants did not argue claim 5 separately in the appeal brief, we group claim 5 with claims 2 and 9 and sustain the examiner's rejection of claim 5 for the reasons stated *supra*.

Nonetheless, we have reviewed appellants' augment directed to claim 5, on pages 6 and 7 of the reply brief, and we are not persuaded. Claim 5 contains

the limitation that "the server allows a third party to access the public component from the web site in a single action." We consider the public component of the web page to be the "home" web page. Fleskes depicts the home web page in figures 89 A & B. Figure 87 depicts one of the login pages, and we note that figure 87 depicts a button "continue to home page". We consider clicking on this button to be a single action that provides access to the home page 89 A&B. Thus, even if appellants had grouped claim 5 separately, appellants' argument presented in the reply brief is not convincing. Accordingly, we sustain the examiner's rejection of claim 5.

Arguments directed to claims 13 through 16

Appellants argue on page 13 of the brief that claims 13 through 16 depend upon claims 1 and 8 and are allowable for the same reasons as claims 1 and 8. Further, on page 14 of the brief appellants argue:

Claims 13-16 specifically recite that the predetermined features of the Internet web site that are incorporated into a personal web page, must link back to that Internet web site. For example, if a personal web page includes features A and B, which were contained on the Internet web site, those features (e.g. A and B) will link back to the original Internet web site. No where does Fleskes disclose this limitation. At most, Fleskes describes entering arbitrary web addresses and hyper-linking to other web sites.[] This is not analogous to having features that link back to an original web site that contained the features.

The examiner responds on page 17 of the answer: "Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the teachings of Fleskes to show the predetermined features of the Internet web site that are incorporated into a

personal web page, linking back to that of the Internet web site.” The examiner adds three additional references to show that web pages typically contain a hypertext link back to the home page.

In the reply brief, on pages 7 and 8, appellants argue, “none of the references, either alone or in combination with each other and/or Fleskes, disclose one or more features that can be incorporated into a personal web page. Correspondingly, they do not disclose features that link back to a web site.” Further, appellants argue that the examiner has not presented sufficient motivation to combine the references.

We concur with the examiner’s reasoning. Initially, we select claim 13 as a representative claim. Claim 13 contains the limitation, “wherein the features that appear in the public component link back to the web site.” In context, the public component is a web page. We note that claim 1, the independent claim upon which claim 13 is dependent, identifies that the private component contains features from the web site. There is no limitation in claim 1 directed to the public component containing features from the web site nor are there any claim limitations directed to where the web page is stored. As such, we consider the scope of claims 1 and 13 to include the arrangement where the server, which controls the web site, also has stored therein the public and private components. As stated *supra* with respect to claim 1, we consider program 26 (figure 1) to meet the claimed web page-forming component and that server 10 (figure 1) is the claimed server that is connected to the Internet and controls the web site. As

discussed *supra*, Fleskes taught that the login page shown in figure 87 contains a link to the home page. We also note that the home page, shown in 89A shows numerous hyperlinks documents. As the features, data and programming are co-located on the server that maintains the web site, the hyperlinks for access to the home page and data from the home page necessarily link back to the server that maintains the web site. Thus, we consider Fleskes to provide suggestion that features that appear in the public web component link back to the web site. Appellants have presented no argument as to why claims 14 through 16 are separately patentable. Accordingly, we group claims 14 through 16 with claim 13, and we sustain the examiner's rejection of claims 13 through 16.

Conclusion

Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the brief or by filing a reply brief have not been considered and are deemed waived by appellants (see 37 CFR § 41.37(c)(vii)). Support for this rule has been demonstrated by our reviewing court in *In re Berger* 279 F.3d 975, 984, 61 USPQ2d 1523, 1528-1529 (Fed. Cir. 2002) wherein the Federal Circuit stated that because the appellants did not contest the merits of the rejections in their brief to the Federal Circuit, the issue is waived. *See also In re Watts* 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1458 (Fed. Cir. 2004).


In summary, we sustain the examiner's rejection claims 1, 3, 4, 6 through 8 and 10 through 12 under 35 U.S.C. § 102 (e) and the examiner's rejection of claims 2, 5, 9 and 13 through 16 under 35 U.S.C. § 103 (a). The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED


KENNETH W. HAIRSTON

KENNETH W. HAIRSTON
Administrative Patent Judge


LANCE LEONARD BARRY
Administrative Patent Judge

~~LANCE LEONARD BARRY~~
~~Administrative Patent Judge~~



ROBERT E. NAPPI
Administrative Patent Judge

BOARD OF PATENT
APPEALS AND
INTERFERENCES

Appeal No. 2005-2700
Application No. 09/734,043

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